

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 225C.6(1) and 2012 Iowa Acts, chapter 1120, section 38, the Department of Human Services amends Chapter 25, “Disability Services Management,” Iowa Administrative Code.

These amendments establish criteria for exempting counties from joining into regions to administer mental health and disability services. The Department is charged with implementing the redesign of the mental health and disability services (MHDS) system into a regionally administered, locally delivered service system. The authority to accept applications for an exemption is repealed effective July 1, 2013.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin as **ARC 0575C** on February 6, 2013. The amendments were also Adopted and Filed Emergency and published as **ARC 0576C** on the same date. The Adopted and Filed Emergency amendments became effective January 8, 2013.

The Department received multiple comments on these amendments from two respondents.

The first respondent had three comments.

In the first comment, the first respondent stated that the rules go beyond what is expected for core services in the MHDS system. The rules list six specific evidence-based services that go beyond the list of core services. These services must be independently verified to meet fidelity standards, and what this means is concerning.

The Department’s response is that Iowa Code section 331.389(1)“b” requires that a county exempted from being required to enter a regional service system furnish evidence that the county has the capacity to provide required core services and perform required functions. Iowa Code section 331.397(5) states that providers of core services must demonstrate competencies necessary for evidenced-based practices. Iowa Code section 331.389(1)“b” states that the Director shall identify criteria for evaluating evidence provided by counties applying for an exemption. Subrule 25.91(4) establishes criteria for evaluating whether the county can provide independent verification of fidelity to six nationally recognized and accepted evidence-based practices endorsed by the Substance Abuse and Mental Health Services Administration.

The second comment from the first respondent stated that the rules require the applicant county to demonstrate that it performs better than the statewide average on eight different criteria and the legislation requires a county to provide services in a manner that is as cost-effective and with outcomes that are at least equal to what could be provided to residents if the services were provided in a regional system. The region would enter into a contract with outcomes so the single county should have the same expectation.

The Department’s response is that Iowa Code section 331.389(1)“b” requires that services provided by counties that are exempted from forming into a region must be as cost-effective and with outcomes at least equal to what could be provided in a regional service system. The Iowa Code further states that the Director shall identify criteria for evaluating the evidence provided by counties applying to be exempted from forming into a region. Since the MHDS regional system is not formed, subrule 25.91(5) establishes criteria using available data as reported by counties in their 2012 county reports and establishes the statewide average as the criteria for service capacity.

The first respondent’s final comment was that there is nothing to measure a county against until regions are operational. The state’s current data is based on single counties and legal settlement. In the future, the data will be based on data related to services in an individual’s county of residency. The rules set an arbitrary and capricious standard that has no relevance as in the redesigned MHDS system. This data should not be used to make an arbitrary decision but used as a guide to evaluate where a county is on a continuum and used in the development of a contract between the state and the county.

The Department’s response is that the data used in subrule 25.91(5) is not arbitrary and is relevant to the redesigned MHDS system.

The second respondent had four comments concerning the proposed amendments.

The second respondent's first comment was that the rules require counties applying for an exemption to have all core services in place and to have an adequate number of providers. It is suggested that the rules require an applicant to demonstrate the current availability of at least 6 of the 12 core service domains and provider competencies.

The Department's response to this comment is that Iowa Code section 331.389(1)"b" requires that counties being approved for an exemption from forming into a region have the capacity to provide the required core services and perform required functions. Iowa Code section 331.397 identifies the core service domains required by the MHDS regions. Rule 441—25.91(331) provides criteria for assessing whether or not the county meets the requirements of the Iowa Code.

The second respondent's second comment was that the rules require that an applicant demonstrate the capability of providing five evidenced-based service models, all of which are related to serving individuals with a mental illness diagnosis and none of which are for individuals with intellectual or developmental disabilities. The respondent suggested that the applicant describe the availability of at least three evidenced-based practices with fidelity measures and suggested not prescribing which evidenced-based models must be practiced.

The Department's response is that Iowa Code section 331.389(1)"b" requires that a county exempted from being required to enter a regional service system furnish evidence that the county has the capacity to provide required core services and perform required functions. Iowa Code section 331.397(5) states that providers of core services must demonstrate competencies necessary for evidenced-based practices. Iowa Code section 331.389(1)"b" states that the Director shall identify criteria for evaluating evidence provided by counties applying for an exemption. Subrule 25.91(4) establishes criteria for evaluating whether the county can provide independent verification of fidelity to six nationally recognized and accepted evidence-based practices endorsed by the Substance Abuse and Mental Health Services Administration.

The second respondent's third comment was that the Department has identified measures to determine service capacity and has not provided the information so the counties know where they stand on these measures. If the Department is using county reports, the Department should use caution in applying this data. It is based on legal settlement, not residency which will be in effect July 1, 2013, and does not measure just non-Medicaid-funded services.

The Department's response to this comment is that the Department has shared the measures for determining service capacity with all counties that have submitted letters of intent to be exempted from forming into a region. Iowa Code section 331.389(1)"b" requires that services provided by counties that are exempted from forming into a region must be as cost-effective and with outcomes at least equal to what could be provided in a regional service system. The Iowa Code further states that the Director shall identify criteria for evaluating the evidence provided by counties applying to be exempted from forming into a region. Since the MHDS regional system is not formed, subrule 25.91(6) establishes criteria using available data as reported by counties in their 2012 county reports and establishes the statewide average as the criteria for network sufficiency.

The second respondent's final comment was that using clear lines of accountability is too restrictive and does not allow for other provisions of the legislation (2012 Iowa Acts, Senate File 2315), including the ability for a region to contract for management of the system or allowing counties to have shared staff.

The Department's response to this comment is that Iowa Code section 331.389 requires that counties applying for an exemption from forming into a region must furnish evidence of clear lines of accountability. That accountability can be to a contracted body that has a governing board and chief executive officer.

No changes were made to the proposed amendments based on the comments presented by the respondents. These amendments are identical to those published under the Notice of Intended Action and Adopted and Filed Emergency.

The Mental Health and Disability Services Commission adopted these amendments on April 18, 2013.

These amendments do not provide for waivers in specified situations because the legislation does not specifically allow for waivers. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 331.389.

These amendments will become effective August 1, 2013, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 25**, preamble, as follows:

This chapter provides for reporting of county expenditures, development and submission of management plans, data collection, and applications for funding as they relate to county service systems for people with mental illness, chronic mental illness, ~~mental retardation~~, intellectual disabilities, developmental disabilities, or brain injury.

ITEM 2. Reserve rules **441—25.82** to **441—25.90**.

ITEM 3. Adopt the following new Division VIII title in **441—Chapter 25**:

DIVISION VIII  
CRITERIA FOR EXEMPTING COUNTIES FROM JOINING INTO REGIONS  
TO ADMINISTER MENTAL HEALTH AND DISABILITY SERVICES

ITEM 4. Adopt the following new rule 441—25.91(331):

**441—25.91(331) Exemption from joining into mental health and disability services region.**

**25.91(1) Definitions.**

“*Applicant*” means a single county or two counties that submit an application for an exemption from the requirement to join a region of three or more contiguous counties.

“*Clear lines of accountability*” means the governing board’s organizational structure makes it evident that the ultimate responsibility for the administration of non-Medicaid-funded mental health and disability services lies with the governing board and that the governing board directly and solely supervises the organization’s chief executive officer.

“*Coordinator of disability services*” means a person who meets the qualifications of a coordinator of disability services as defined in Iowa Code section 331.390(3) “*b*” and is responsible for ensuring that individuals receive effective service coordination consistent with the county’s or counties’ management plan.

“*Core services*” means core services mandated to be provided by the regional service system as defined in Iowa Code section 331.397.

“*Department*” means the Iowa department of human services.

“*Director*” means the director of the department.

“*Evidence-based practice*” means interventions that have been rigorously tested, have yielded consistent, replicable results, and have proven safe, beneficial, and effective.

“*Penetration rate,*” for the purposes of this rule, means the per capita number of adults in the adult population of a county who are receiving mental health and disability services.

“*Reasonably close proximity*” means a distance of 100 miles or less or a driving distance of two hours or less from the county seat or county seats of the applicant.

“*Trauma-informed care*” means services that are based on an understanding of the vulnerabilities or triggers of individuals who have experienced trauma, recognize the role trauma has played in the lives of those individuals, are supportive of trauma recovery, and avoid retraumatization.

**25.91(2) Application for exemption from the requirement to form a region of three or more contiguous counties.** The following requirements apply to an application for exemption from the requirement to form a region of three or more contiguous counties:

*a.* The applicant shall submit a written statement that the applicant intends to apply for an exemption from the requirement to form a region of three or more contiguous counties. The statement must be signed by the chairperson of the county board of supervisors of the applicant’s county. The signed written statement of intent must be received by the department on or before May 1, 2013, at 4:30 p.m.

*b.* The applicant shall submit a written application on forms specified by the department with required supporting documentation. The department shall only accept applications that are complete, signed by the applicant’s chairperson of the county board of supervisors, dated, and received by the department on or before June 30, 2013, at 4:30 p.m.

*c.* The director of the department shall issue a decision on the application within 45 days of receiving the application. The director shall deny an application if the application does not meet the criteria described in Iowa Code or rule.

**25.91(3) Applicant criteria.** The application shall include written documentation and evidence that the applicant has:

*a.* The capacity to provide required core services and perform required functions described in Iowa Code section 331.397.

*b.* A contract with a community mental health center or a federally qualified health center that provides psychiatric and outpatient mental health services in the applicant’s county or counties or written intent from the community mental health center or federally qualified health center to enter into such a contract.

*c.* A contract with a hospital with an inpatient psychiatric unit or a state mental health institute located in or within reasonably close proximity that has the capacity to provide inpatient services to the

applicant or written intent from the state mental health institute or inpatient psychiatric unit to enter into such a contract.

*d.* An administrative structure with clear lines of accountability. A description of the applicant's administrative functions shall be included with the application.

*e.* Taken steps to determine and demonstrate that forming a region of three or more contiguous counties is not workable.

**25.91(4) Core services and required functions standards.** The department shall review the application to determine if the applicant has provided written documentation and evidence for the availability of:

*a.* A 24-hour, 7-day-a-week, 365-days-per-year telephone response system for mental health and disability-related emergencies in the applicant's county or counties.

*b.* Service providers in the applicant's county or counties that demonstrate the capability of providing evidence-based practices that the applicant has independently verified meet established fidelity to evidence-based service models including, but not limited to:

- (1) Assertive community treatment or strengths-based case management.
- (2) Integrated treatment of co-occurring substance abuse and mental health disorders.
- (3) Supported employment.
- (4) Family psychoeducation.
- (5) Illness management and recovery.
- (6) Permanent supportive housing.

*c.* Service providers in the applicant's county or counties that are trained to provide effective services to persons with two or more of the following co-occurring conditions: mental illness, intellectual disability, developmental disability, brain injury, or substance use disorder. Training for serving persons with co-occurring conditions shall be training identified by the Substance Abuse and Mental Health Services Administration, the Dartmouth Psychiatric Research Center or other generally recognized professional organization specified in the application.

*d.* Service providers in the applicant's county or counties that are trained to provide effective trauma-informed care. Trauma-informed care training shall be training identified by the National Center for Trauma-Informed Care or other generally recognized professional organization specified in the application.

**25.91(5) Service capacity.** The department shall review the material provided in the application and by the applicant and other counties in their required county reports to determine if the applicant demonstrates that it has:

*a.* Sufficient financial resources to fund required core services.

*b.* A penetration rate that is at least equal to or exceeds the statewide per capita average for individuals with a mental illness or individuals with an intellectual disability.

*c.* A per capita use of inpatient psychiatric hospital services that is less than or equal to the statewide per capita average.

*d.* A per capita use of intermediate care facilities for individuals with intellectual disabilities that is less than or equal to the statewide per capita average.

*e.* A per capita use of outpatient mental health services that is greater than or equal to the statewide per capita average.

*f.* A per capita use of supported community living services that is greater than or equal to the statewide per capita average.

*g.* An average cost of service per individual served that is equal to or less than the statewide average.

*h.* Administrative costs, as a percentage of non-Medicaid service expenditures, that are less than or equal to the statewide average.

**25.91(6) Provider network sufficiency.** The department shall review the application to determine if the applicant provided written documentation and evidence of:

*a.* A contract with a community mental health center that provides services in the applicant's county or counties or a federally qualified health center that provides psychiatric and outpatient mental

health services in the applicant's county or counties or written intent by a community mental health center or federally qualified health center to enter into such a contract.

*b.* Contracts with licensed and accredited providers to provide each service in the required core service domains or written intent by providers to enter into such contracts.

*c.* Adequate numbers of licensed and accredited providers to ensure availability of core services so that there is no waiting list for services due to lack of available providers.

*d.* A contract with an inpatient psychiatric hospital unit or state mental health institute within reasonably close proximity or written intent by an inpatient psychiatric hospital unit or state mental health institute to enter into such a contract.

**25.91(7) to 25.91(9)** Reserved.

**25.91(10) Staffing.** The department shall review the application to determine if the applicant provided written documentation and evidence of:

*a.* Clear lines of accountability.

*b.* The inclusion of one or more coordinators of disability services on the county administrator staff.

**25.91(11)** Reserved.

**25.91(12) Determination that formation of a region is unworkable.** The department shall review the application to determine if the applicant has provided documentation and convincing evidence that the applicant has evaluated the feasibility of forming into a region of three or more contiguous counties and that forming into such a region is unworkable.

**25.91(13) Compliance with requirements of a mental health and disability services region.** The applicant shall continuously fulfill all of the requirements of a region under Iowa Code chapters 331 and 225C for a regional service system, regional service system management plan, regional governing board, and regional administrator and any other requirements applicable to a region of counties providing local mental health and disability services. If the applicant does not fulfill these requirements, the department may address the deficiencies in the following order:

*a.* Require compliance with a corrective action plan that may include, but is not limited to, participation in technical assistance provided or arranged by the department, revision of the regional management plan, or other corrective actions required by the department.

*b.* Reduce the amount of the annual state funding provided through the mental health and disabilities regional services fund for the regional service system, not to exceed 15 percent of the amount of the annual state funding.

*c.* Withdraw approval for the county exemption.

This rule is intended to implement Iowa Code section 331.389.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/15/13.